IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.W.P.NO.2530 OF 2005

Rakesh Avinash Agarwal ..Petitioner

Vs.

The State of Maharashtra
and Anr. ..Respondents

...

Mr.A.R.Shaikh Advocate for Petitioner
Mrs.A.S.Pai A.P.P. for State

...

CORAM: D.G.DESHPANDE AND
SMT.V.K.TAHILRAMANI,JJ.
DATE : MAY 4,2006

P.C.:

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State. Rule. By consent, in the circumstances of this case, Rule is made returnable forthwith.

2. The petitioner has challenged the order of the District Collector, Nasik dated 25.8.2005. The last part of the said order is "therefore, I District Magistrate, Nasik hereby, according to the provision of Rule 131(2) of the Maharashtra Cinema Regulations 1966 cancel the licence...".

3. Counsel for the petitioner drew our attention to the Maharashtra Cinema Regulation Rules 1966. Rule 131 of the said Rules, read as under:

> . "131. Suspension or cancellation of licence:- (1) The licensing authority may suspend or cancel any licence granted under these rules for contravention of any of these rules, provided that the licensing authority shall give the licensee an opportunity to show cause before taking any action under this sub-rule.
>
> . (2) Notwithstanding the provisions of sub-rule (1), the cinema licence shall be liable to immediately suspension or cancellation by the licensing authority if, in the opinion of the licensing authority, the applicancies in the cinema for protection against and for extinguishing fire are inadequate or in any way insufficient or in unsatisfactory condition."

4. In fact, sub-rule (1) of 131 of the said Rules empower the licensing authority to cancel the licence if there is contravention of any of the Rules after giving show cause notice to the person concerned. However, in the operative part of the order, the Collector has referred to sub-rule (2) i.e. a power given in cases of technical laches or

breaches. Admittedly, the licence came to be cancelled because of registration of a case against the petitioner for exhibiting obscene movies. The impugned order is wrong inasmuch as it referred to a wrong provision. We therefore, set aside and quash the said order. However, the District Magistrate/Collector at Nasik shall be at liberty to pass appropriate order after hearing the petitioner for which a notice in writing will be given to the petitioner and authority may pass appropriate order. This exercise should be done within two weeks from the communication of this order.

5. Petition is disposed of.

6. Certified copy is expedited.

[D.G.DESHPANDE, J.]

[SMT.V.K.TAHILRAMANI,J.]